

1 The Commission suspended Plaintiff from the bench on May 10, 2007 on allegations of
2 violation of the Code of Judicial Conduct. The hearing took place on August 4, 2008 and ended
3 August 12, 2008. The Commission removed her from the bench.

4 Plaintiff filed an Emergency Motion for Temporary Restraining Order and Preliminary
5 Injunction on August 4, 2008. (#3). The Court held a hearing for the Temporary Restraining Order
6 on August 6, 2008 and denied the TRO. At that time, the hearing for the Preliminary Injunction
7 Motion was set for August 14, 2008. Between August 2008 and December 2008, the hearing time
8 was delayed by parties' multiple stipulations. (#25, #28, #32). Plaintiff filed a brief in support of
9 her Motion for Preliminary Injunction. (#33). Her counselors' Motion to Withdraw was granted on
10 December 3, 2008. (#35). Defendant Dorothy Nash Holmes filed a response to Plaintiff's
11 Emergency Motion for Temporary Restraining Order and Preliminary Injunction (#37). Defendant
12 Nevada Commission on Judicial Discipline filed their response to the Emergency Motion as well as
13 a Countermotion to Dismiss. (#39, #41).

14 DISCUSSION

15 I. Preliminary Injunction

16 A. Legal Standard

17 A preliminary injunction is an "extraordinary remedy that may only be awarded upon a clear
18 showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council*, 129 S.Ct.
19 365, 376 (2008). A plaintiff must establish four elements to succeed in her preliminary injunction:
20 (1) a likelihood of success on the merits; (2) a likelihood of threat of irreparable injury without the
21 injunction; (3) a balance of hardships favoring the plaintiff; and (4) the advancement of the public
22 interest favoring a granting of the injunction. *Id.*; *Raich v. Ashcroft*, 352 F.3d 1222, 1227 (9th Cir.
23 2003). The Supreme Court rejected the Ninth Circuit's two prong sliding standard, held that the
24 "possibility" standard is too lenient, and specified the proper standard as a demonstration of

1 irreparable harm that is “likely” in the absence of an injunction. *Winter*, 129 S.Ct. at 376.
2 Additionally, the likelihood of irreparable injury can be outweighed by public or petitioner’s interest.
3 *Id.* at 378.

4 When an injunction is issued, the applicant is required to give security “in such sum as the
5 court deems proper, for the payment of costs and damages as may be incurred or suffered by any
6 party who is found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c) (2004).

7 **B. Preliminary Injunction Elements**

8 Plaintiff alleges that a preliminary injunction should be issued as the Commission violated
9 her rights by limiting her time to present her defense at the Commission’s hearing. (#33 at 3).
10 Plaintiff requests that the injunction stay the Commission’s decision to remove her from the bench
11 as well as stay her suspension from the bench.

12 Plaintiff’s Motion for Preliminary Injunction fails for a number of reasons. She has failed
13 to establish the elements necessary for the issuance of a preliminary injunction. She is not likely to
14 succeed on the merits of her claim. The Commission determined to remove her from the bench, and
15 she lost her bid for re-election in the primary election. The time has passed when a preliminary
16 injunction could prevent her removal from the bench. The balance of hardship does not tip in her
17 favor because Plaintiff filed an appeal from the Commission’s determination to the Nevada Supreme
18 Court and accordingly, she has an adequate remedy at law and will not suffer irreparable harm by
19 the denial of her preliminary injunction motion.

20 **C. Mootness**

21 Article III of the United States Constitution requires that there be a “live case or controversy
22 at the time a federal court decides a case.” *O’Neal v. City of Seattle*, 66 F.3d 1064, 1066 (9th Cir.
23 1995). After the Commission’s decision, no case or controversy exists as plead in Plaintiff’s
24 Complaint. The suit is moot in that Plaintiff no longer has a personal stake in the outcome of the

1 injunction, and there remains no justiciable live case or controversy between the parties. *See*
2 *Zegarra-Gomaz v. INS*, 314 F.3d 1124, 1126 (9th Cir. 2003).

3 Accordingly, Plaintiff's Motion for Preliminary Injunction (#3) is *denied*.

4 **II. Dismissal Under Rule 12: Failure to State a Claim upon Which Relief Can Be Granted**

5 **A. Legal Standard**

6 Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, dismissal is appropriate if the
7 plaintiff "fail[s] to state a claim upon which relief can be granted." Dismissal for failure to state a
8 claim under Rule 12(b)(6) is proper only if it is beyond doubt that the plaintiff can prove no set of
9 facts in support of the claim that would entitle the plaintiff to relief. *Williamson v. Gen. Dynamics*
10 *Corp.*, 208 F.3d 1144, 1149 (9th Cir. 2000). The review is limited to the complaint, and all
11 allegations of material fact are taken as true and viewed in the light most favorable to the plaintiff.
12 *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996). Although courts assume the factual
13 allegations to be true, courts should not "assume the truth of legal conclusions merely because they
14 are cast in the form of factual allegations." *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
15 1981).

16 On a motion to dismiss, the court "presumes that general allegations embrace those specific
17 facts that are necessary to support the claim." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889
18 (1990). However, conclusory allegations and unwarranted inferences are insufficient to defeat a
19 motion to dismiss under Rule 12(b)(6). *In re Stac Elecs.*, 89 F.3d at 1403. If either party submits
20 materials outside of the pleadings in support or in opposition to the motion to dismiss, and the
21 district court relies on these materials, the motion may be treated as one for summary judgment.
22 *Anderson v. Angelone*, 86 F.3d 932, 934 (9th Cir. 1996).

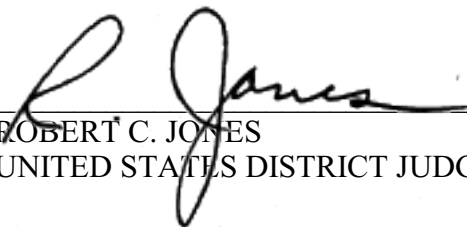
23 Plaintiff failed to file opposition to this Countermotion, constituting a consent to the granting
24 of it under Local Rule 7-2(d).

1 Court finds that the Commission, acting in its capacity as an agency and/or department of the State
2 of Nevada, is immune from Plaintiff's suit. Accordingly, Defendant's Motion to Dismiss is *granted*.
3 (#41).

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that Plaintiff's Motion for Preliminary Injunction is *denied* (#3)
6 and Defendants' Motion to Dismiss is *granted* (#41).

7 DATED: March 26, 2009

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10 ROBERT C. JONES
11 UNITED STATES DISTRICT JUDGE
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